IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 26281 of 2005(D)

AGAINST THE ORDER IN EP.1652/04 IN
OS.1765/2003 of PRL.M.C.,IRINJALAKUDA

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PETITIONER:

ALBIN RODRIX, S/O. GEORGE RODRIX,
KOLLAM VALIAKATH HOUSE, PADIYUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT:

THE SYNDICATE CHIT FUNDS LTD.,
IRINJALAKUDA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 26281/05)

PETITIONER'S EXT.:

EXT.P1:TRUE COPY OF THE EXECUTION PETITION NO.1652/04 DT. 3.9.2004.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.26281 of 2005

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Dated: 1st June, 2007

JUDGMENT

Even though the respondent has been served with notice in this proceeding under Article 227 of the Constitution challenging the order of arrest passed by the execution court, he has not entered appearance so far. This court while admitting the Writ Petition granted stay subject to certain conditions. One of the conditions was that a sum of Rs.5,000/- shall be deposited. Mr.Rajesh Chakyat, counsel for the petitioner submits that all the conditions imposed by this court in its order dated 5.9.2005 have been complied with by the petitioner. The court below will ensure that the conditions imposed by this court in its order dated 5.9.2005 have been complied with by the petitioner. Learned counsel submits that the order directing arrest is a single line order and that there was no enquiry under Rule 40 of Order XXI preceding the same. In other words, the submission is that there has been no finding based on enquiry that the petitioner in spite of sufficient means has wilfully neglected to discharge the decree debt. It appears to me that the order of arrest was passed by the learned Munsiff on the basis that in response to notice under Rule 37 the petitioner did not file any objections. In view of the uncontested

position that no enquiry has been conducted into the financial ability of the petitioner and also into the wilful nature of his neglect, I feel that the court below should be directed to hold an enquiry. However I am inclined to do so only on imposing further conditions. Accordingly, the Writ Petition will stand disposed of issuing the following directions:

The order directing arrest of the petitioner will stand set aside and the court below shall pass fresh orders after conducting an enquiry into the question whether the petitioner has in spite of sufficient means wilfully neglected to pay the decree debt in a lump or a substantial portion of the decree amount provided the petitioner complies with the following conditions:

The petitioner shall pay 1st of every month commencing from 1.7.2007 at the rate of Rs.1500/- till such time as the enquiry is completed and orders are passed. In the event of any default, the petitioner will forfeit the benefit of this judgment and the impugned order will stand revived.

srd **PIUS C.KURIAKOSE, JUDGE**